

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS AT BOSTON

HEATHER KIERNAN,

Plaintiff,

-v-

CIVIL NO. 04-10131 RBC

ARMORED MOTOR SERVICE OF
AMERICA, INC., and
FRANCESCO CIAMBRIELLO

Defendants.

**PLAINTIFF HEATHER KIERNAN'S MOTION FOR STATUS CONFERENCE TO
ADDRESS ISSUES OF SPOILIATION**

The Plaintiff in the above captioned matter respectfully requests that the Court set a status conference to address the issues of spoliation of evidence addressed in Plaintiff's Motion for Sanctions (Docket no. 61).

In support, the undersigned respectfully represents:

1. Plaintiff filed a Motion for Sanctions and other Relief or in the Alternative Motion for Bifurcation Against the Defendants for Spoliation of Evidence. No. 61.
2. On September 27, 2006, the Court denied the motion without prejudice. The order also stated that "[t]he Court would not decide the issue of alleged spoliation of evidence without an evidentiary hearing before the Court or before a jury because there are too many contested issues of fact. At the conference which will be scheduled in order to set a trial date, counsel shall be prepared to

discuss how the contested factual issues respecting the alleged spoliation can best be resolved.”

3. The parties require a status conference to determine whether this issue should be bifurcated, as the parties are unable to reach any agreement as to how the spoliation can be remedied.
4. The Defendants have filed a Motion to Continue the trial on the basis that the Plaintiff is pregnant with her third child.
5. Assuming the trial does not go forward as scheduled, a trial still could be held on the issue of spoliation.
6. A status conference would assist the parties in determining the feasibility of a bench or jury trial on this issue, as well as any amendments or changes to the Court’s Order for Pretrial Conference dated November 14, 2006.
7. Local Rule 7.1(A)(2) Certification: Neither Defendant opposes this motion.

WHEREFORE, for all of the foregoing reasons, the Plaintiff respectfully requests that her Motion for Status Conference to Address Issues of Spoliation be ALLOWED and that the Court enter any additional relief deemed equitable, just and proper.

Respectfully submitted:
HEATHER KIERNAN

DATED: March 15, 2006

/s/ William J. McLeod
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Certificate of service

In accordance with the rules of this Court, I hereby certify today, March 15, 2006, that I caused a true copy of this document to be served on all parties listed below, who are participants in the Court's ECF program:

David Ardito, counsel for Ciambriello
Allison Romantz, counsel for AMSA

/s/ William J. McLeod
William J. McLeod